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HOUSE BILL 478

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Rhonda S. King

AN ACT

**RELATING TO HEALTH; ENACTING THE BODY ART SAFE PRACTICES ACT;
MAKING AN APPROPRIATION.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the
"Body Art Safe Practices Act".

Section 2. PURPOSE. -- The purpose of the Body Art Safe
Practices Act is to provide a safe and healthy environment for
the administration of body art.

Section 3. DEFINITIONS. -- As used in the Body Art Safe
Practices Act:

A. "board" means the board of barbers and
cosmetologists;

B. "body art" means tattooing, body piercing or
scarification but does not include practices that are

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1 considered medical procedures by the New Mexico board of
2 medical examiners;

3 C. "body art establishment" means a fixed or mobile
4 place where body art is administered on the premises;

5 D. "body piercing" means to cut, stab or penetrate
6 the skin to create a permanent hole or opening;

7 E. "contaminated waste" means liquid or semiliquid
8 blood or other potentially infectious materials; contaminated
9 items that would release blood or other potentially infectious
10 materials in liquid or semiliquid state if compressed; items
11 that are caked with dried blood or other potentially infectious
12 materials and that are capable of releasing these materials
13 during handling; and contaminated sharps and pathological and
14 microbiological wastes containing blood and other potentially
15 infectious materials;

16 F. "disinfection" means the killing of
17 microorganisms, but not necessarily their spores, on inanimate
18 objects;

19 G. "employee" means a person employed in a body art
20 establishment who administers body piercing, tattooing or
21 scarification;

22 H. "equipment" means machinery used in connection
23 with the operation of a body art establishment, including
24 fixtures, containers, vessels, tools, devices, implements,
25 furniture, display and storage areas, sinks and other

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1 apparatuses and appurtenances;

2 I. "handsink" means a lavatory equipped with hot
3 and cold running water under pressure, used solely for washing
4 hands, arms or other portions of the body;

5 J. "instruments used for body art" means hand
6 pieces, needles, needle bars and other items that may come into
7 contact with a person's body during the administration of body
8 art;

9 K. "invasive" means entry into the body either by
10 incision or insertion of an instrument into or through the skin
11 or mucosa or by other means intended to compromise the skin or
12 mucosa;

13 L. "operator" means the owner or the owner's agent
14 in charge of a body art establishment;

15 M. "procedure surface" means any surface that
16 contacts the client's unclothed body during a body art
17 procedure or any associated work area that may require
18 sanitizing;

19 N. "scarification" means cutting into the skin with
20 a sharp instrument or branding the skin with a heated
21 instrument to produce a permanent mark or design on the skin;

22 O. "sharps" means any sterilized object that is
23 used for the purpose of penetrating the skin or mucosa,
24 including needles, scalpel blades and razor blades;

25 P. "sharps container" means a puncture-resistant,

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1 leak-proof container that can be closed for handling, storage,
2 transportation and disposal and is labeled with the
3 international "biohazard" symbol;

4 Q. "single use" means products or items that are
5 intended for one-time, one-person use and are disposed of after
6 use on each client, including cotton swabs or balls, tissues or
7 paper products, paper or plastic cups, gauze and sanitary
8 coverings, razors, piercing needles, scalpel blades, stencils,
9 ink cups and protective gloves;

10 R. "sterilization" means destruction of all forms
11 of microbiotic life, including spores; and

12 S. "tattooing" means the practice of depositing
13 pigment, which is either permanent, semi permanent or temporary,
14 into the epidermis using needles by someone other than a state-
15 licensed physician or a person under the supervision of a
16 state-licensed physician and includes permanent cosmetics,
17 dermatography, micropigmentation, permanent color technology and
18 micropigment implantation.

19 Section 4. LICENSE--APPLICATION--REVOCATION--
20 SUSPENSION.--

21 A. An employee of a body art establishment shall
22 obtain a body artist license, requirements for which shall be
23 defined by the board.

24 B. An operator shall possess and post in a
25 conspicuous place a valid and unsuspended license issued by the

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1 board in accordance with the Body Art Safe Practices Act and
2 the rules promulgated pursuant to that act. An operator shall
3 not display a license, unless it has been issued to the
4 operator by the board and has not been suspended or revoked,
5 and shall not transfer a license.

6 C. An operator shall apply to the board for the
7 issuance of a license annually and pay fees established by the
8 board. The body art establishment shall renew the license
9 annually. The board shall set license fees and license renewal
10 fees in amounts necessary to administer the provisions of the
11 Body Art Safe Practices Act.

12 D. The board shall promulgate rules for the
13 revocation or suspension of licenses for those body art
14 establishments that fail to comply with a provision of the Body
15 Art Safe Practices Act. A license shall not be suspended or
16 revoked pursuant to the Body Art Safe Practices Act without
17 providing the operator of a body art establishment an
18 opportunity for an administrative hearing. The hearing officer
19 shall not be a person previously involved in the suspension or
20 revocation action. An inspection made more than twenty-four
21 months prior to the most recent inspection shall not be used as
22 a basis for suspension or revocation.

23 E. Within ninety days of the receipt of a license
24 and annually thereafter, the operator, employees and any
25 apprentices shall provide proof of attendance at a blood-borne

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1 pathogen training program approved by the board.

2 F. An individual not licensed may work as an
3 apprentice employee provided that the apprentice employee
4 completes an approved blood-borne pathogen training program,
5 practices under the direct supervision of a licensed employee
6 and meets requirements established by the board.

7 G. A current body art establishment license shall
8 not be transferable from one person to another.

9 H. Body art establishments engaged in the body art
10 business before the effective date of the Body Art Safe
11 Practices Act shall have one hundred twenty days from the
12 effective date of that act to comply with the license
13 requirements.

14 I. The following information shall be kept on file
15 on the premises of a body art establishment and available for
16 inspection by the board:

17 (1) the full names of all employees in the
18 establishment and their exact duties;

19 (2) the following information pertaining to
20 all employees:

- 21 (a) date of birth;
- 22 (b) gender;
- 23 (c) home address; and
- 24 (d) phone number;

25 (3) the board-issued license with

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1 identification photograph;

2 (4) the body art establishment name and hours
3 of operation;

4 (5) the name and address of the body art
5 establishment owner;

6 (6) a complete description of all body art
7 performed;

8 (7) a list of all instruments, body jewelry,
9 sharps and inks used, including names of manufacturers and
10 serial or lot numbers or invoices or their documentation
11 sufficient to identify and locate the manufacturer; and

12 (8) a copy of the Body Art Safe Practices Act.

13 J. An operator shall notify the board in writing
14 not less than thirty days before changing the location of a
15 body art establishment. The notice shall include the street
16 address of the new location.

17 Section 5. INSPECTION BY BOARD. --

18 A. The board shall annually inspect body art
19 establishments. An operator, employee or agent shall allow a
20 board official, upon proper identification, to enter the
21 premises, inspect all parts of the premises and inspect and
22 copy records of the body art establishment. The operator,
23 employee or agent shall be given an opportunity to accompany
24 the board official on the inspection and to receive a report of
25 the inspection within fourteen days after the inspection.

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1 B. Refusal to allow an inspection is grounds for
2 suspension or revocation of the license of the operator,
3 provided that the board official tendered proper identification
4 prior to the refusal.

5 Section 6. EXEMPTION. --A person who pierces only the
6 outer perimeter of the ear, not including any cartilage, using
7 a pre-sterilized encapsulated single use stud ear piercing
8 system, implementing appropriate procedures, is exempt from the
9 requirements of the Body Art Safe Practices Act.

10 Section 7. STERILE PROCEDURES. --The board shall establish
11 by rule requirements for:

12 A. the use and disposal of equipment and
13 instruments; provided that:

14 (1) all sharps shall be sterilized prior to
15 use;

16 (2) single use items shall not be used on more
17 than one client for any reason; and

18 (3) all body art stencils shall be single use
19 and disposable;

20 B. the prohibition of off-site sterilization; and

21 C. procedures to control disease borne by contact
22 with customer or employee skin mucosa.

23 Section 8. IMMEDIATE SUSPENSION. --The board may suspend a
24 license immediately without prior notice to the holder of the
25 license if it determines, after inspection, that conditions

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1 within a body art establishment present a substantial danger of
2 illness, serious physical harm or death to customers who might
3 patronize a body art establishment. A suspension action taken
4 pursuant to this section is effective when communicated to the
5 operator, employee or agent. Suspension action taken pursuant
6 to this section shall not continue beyond the time that the
7 conditions causing the suspension cease to exist, as determined
8 by a board inspection at the request of the operator.

9 Section 9. JUDICIAL REVIEW. --An applicant denied a
10 license or an operator whose license is suspended or revoked by
11 the board may appeal pursuant to Section 39-3-1.1 NMSA 1978.

12 Section 10. ENFORCEMENT. --

13 A. The board may seek relief in district court to
14 enjoin the operation of a body art establishment.

15 B. The district court may impose a civil penalty
16 not exceeding five hundred dollars (\$500) for a violation of
17 the Body Art Safe Practices Act. Each violation of the
18 provisions of the Body Art Safe Practices Act constitutes a
19 separate offense.

20 Section 11. BODY ART SAFE PRACTICES FUND. --The "body art
21 safe practices fund" is created in the state treasury. All
22 license fees and charges imposed by the board shall be
23 deposited in the fund for the purpose of carrying out the
24 provisions of the Body Art Safe Practices Act. Any unexpended
25 or unencumbered balance remaining at the end of a fiscal year

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1 shall not revert to the general fund.

2 Section 12. MUNICIPALITIES. --The Body Art Safe Practices
3 Act provides minimum standards for safe body art practices. A
4 municipality may by ordinance provide more stringent standards.

5 Section 13. RULES. --The board shall, in conjunction with
6 the department of health, promulgate rules necessary to
7 implement the provisions of the Body Art Safe Practices Act.